United Nations A/CN.9/SR.868

General Assembly

Distr.: General
31 July 2008

Original: English

United Nations Commission on International Trade Law
Forty-first session

Summary record of the 868th meeting
Held at Headquarters, New York, on Tuesday, 17 June 2008, at 3 p.m.

Chairperson: Mr. Illescas ..... (Spain)

Contents

Finalization and approval of a draft convention on contracts for the international carriage of goods wholly or partly by sea (*continued*)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Chief, Official Records Editing Section, room DC2-750, 2 United Nations Plaza.

Any corrections to the record of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

08-38636 (E)

The meeting was called to order at 3.10 p.m.

Finalization and approval of a draft convention on contracts for the international carriage of goods wholly or partly by sea (*continued*) (A/CN.9/642, A/CN.9/645 and A/CN.9/658 and Add.1-13)

Draft article 14 (Specific obligations) (*continued*)

1. **Mr. Oyarzábal** (Observer for Argentina) said that in an attempt to address the concerns raised by the African States in particular, his delegation proposed inserting text along the lines of "to the extent that the particular characteristics of the goods so require" in paragraph 2, so as to make it clear that the carrier or shipper could stipulate that the loading, handling, stowing or unloading of the goods was to be performed by the shipper only when the particular characteristics of the goods so required. He also proposed amending the title of draft article 14 to read "Obligations to properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods" and deleting the word "specific" in the title of draft article 15 so that it read "Obligations applicable to the voyage by sea".

2. **Mr. Mayer** (Switzerland) said that the purpose of paragraph 2 was to limit paragraph 1; there was no intention whatsoever to place an obligation on the consignee. His delegation had made that clear during the Working Group's discussions on draft article 45, paragraph 2, which had ultimately been deleted. All aspects of the consignee's responsibilities would be governed by national law. In that connection, he referred the Commission to paragraphs 148 to 150 of the Working Group's report (A/CN.9/645).

3. **Ms. Czerwenka** (Germany) said that the criticisms of the draft article's title were warranted; the obligation to carry the goods was not a specific obligation but a key obligation of the carrier. Her delegation therefore endorsed the proposal made by the representative of Sweden at the morning meeting (A/CN.9/SR.867) to amend the title to read "Obligations in relation to the goods".

4. She also took the point made by the Italian delegation at the morning meeting (A/CN.9/SR.867) that it was important to consider the relationship between draft article 14, paragraph 2, and draft article 12, paragraph 3, which made it impossible to do away with the obligation to load and unload the goods. However, the relationship was not entirely clear and should, perhaps, be looked at further. Since the text already contained that specific provision on loading and unloading, her delegation could support the retention of the current version of draft article 14, paragraph 2, provided the reference to the consignee was removed. Contrary to the Swiss interpretation, her delegation believed that paragraph 2 did give the impression that an obligation could be placed on the consignee through a written agreement between the carrier and the shipper.

5. **Mr. Serrano Martínez** (Colombia) said that draft article 14, paragraph 1, clearly set out the carrier's obligations, unlike the Hague-Visby Rules, which were vague in that regard. Paragraph 2 reflected the primacy of the will of both the carrier and the shipper, since the carrier and the shipper could agree that the shipper, the documentary shipper or the consignee would perform certain specific obligations. His delegation therefore supported the current version of both the title and the text of draft article 14.

6. **The Chairperson** said that since none of the proposals appeared to enjoy broad support, he took it that most delegations preferred to retain the current version of the text.

7. *Draft article 14 was approved in substance and referred to the drafting group.*

Draft article 15 (Specific obligations applicable to the voyage by sea)

8. **Mr. Elsayed** (Egypt) said that the general reference to "due diligence" in the chapeau of draft article 15 was insufficient, since due diligence was governed by many different criteria. He therefore proposed inserting after "due diligence" a reference to the prevailing standards of maritime safety.

9. **Mr.** Amadou Kane **Diallo** (Senegal) said that, just as other delegations had proposed having the title of draft article 14 refer to obligations concerning the cargo, the title of draft article 15 could refer to obligations concerning the ship. Such wording would reflect more accurately the content of the draft articles in question.

10. **Mr. van der Ziel** (Observer for the Netherlands) said that overall draft article 15 was acceptable to his delegation. He did wish, however, to introduce some minor drafting changes in subparagraph (c). The current wording suggested that containers were an

intrinsic part of the ship; there were many examples of parties making that argument in litigation. To remove any ambiguity, he proposed amending the beginning of the subparagraph so that it read: "Make and keep the holds, all other parts of the ship in which the goods are carried and any containers supplied by the carrier in or upon which the goods are carried ...".

11. At the twenty-first session of Working Group III (Transport Law), the Dutch and Swedish delegations had proposed changing the definition of "container" so as to include road and railroad cargo vehicles. The Working Group had decided that the appropriateness of the definition would be considered in each provision where the word "container" appeared. Draft article 15, subparagraph (c), was one provision where the appropriateness of expanding the definition had not yet been considered. He therefore proposed that the change in the definition of "container" should be taken into account when considering draft article 15.

12. **Mr. Tsantzalos** (Greece) said that, in order to be broadly accepted by the international community, a new convention should safeguard a fair balance of rights and liabilities and, therefore, a fair allocation of risk between the parties to the contract of carriage. In that context, draft article 15 created an imbalance between the interests of carriers, on the one hand, and shippers, on the other.

13. Greece had already expressed its reservations about the extension of the carrier's obligation to exercise due diligence in relation to the vessel's seaworthiness to cover the entire voyage. As stated in its written comments on the draft convention (A/CN.9/658/Add.10, para. 4), owing to that and other new elements, the carrier would be exposed to greater liability under the new convention than under existing international practice (in other words, the Hague-Visby Rules), which would result in a shift in the allocation of risk between the parties. For that reason, his delegation would have preferred it if that obligation had not been included in the draft convention. He had no intention, however, of reopening the debate at the current juncture. His delegation supported the minor drafting changes proposed by the delegation of the Netherlands.

14. **Mr. Bigot** (Observer for Côte d'Ivoire) wondered if the secretariat might be able to look at the French version of the draft article, especially subparagraph (c), since the current wording was unclear.

15. **The Chairperson** said that the request had been noted.

16. **Mr. Mollmann** (Observer for Denmark), responding to the representative of the Netherlands, said that, as far as he recalled, the Working Group had agreed not to extend the definition of "container" per se but rather to look at the appropriateness of the definition article by article and add a reference to road or railroad cargo vehicles where the context so required. Such a reference was unnecessary in the draft article in question, since it was very rare for carriers to supply road or railroad cargo vehicles to the shipper. That said, if such a practice did exist — or came to exist in the future — then road and railroad cargo vehicles should be treated in the same way as containers. His delegation was, therefore, open to the idea of extending the definition in draft article 15, subparagraph (c), in line with the Dutch proposal. The minor drafting changes proposed by the Netherlands, meanwhile, had his delegation's full support.

17. **Mr. Kim** Bong-hyun (Republic of Korea) endorsed the drafting changes proposed by the observer for the Netherlands.

18. **Mr. Berlingieri** (Italy) said that his delegation supported the first proposal of the Netherlands, namely, to refer in article 15, subparagraph (c), to "the holds, all other parts of the ship in which the goods are carried and any containers supplied by the carrier in or upon which the goods are carried". However, a reference to road or railroad cargo vehicles, however appropriate elsewhere, was not called for in draft article 15, since it would be quite unusual for the carrier to supply such vehicles.

19. **Ms. Carlson** (United States of America) said that her delegation could support the first Netherlands proposal but would appreciate clarification as to the exact wording proposed for the reference to road or railroad cargo vehicles.

20. **Mr. Sharma** (India) said that Denmark and Italy were correct in the points they had raised: the agreement in the Working Group had in fact been, not to change the definition of "container" to encompass road and railroad cargo vehicles, but to decide article by article whether to include a reference to them. Such a reference was not warranted in draft article 15, since cases where the carrier supplied road or railroad cargo vehicles were very rare.

21. With regard to the chapeau, which stated that "the carrier is bound to exercise due diligence", he would like to know whether the obligation of the carrier was to exercise due diligence or actually to do the things listed in subparagraphs (a), (b) and (c), in other words, to make and keep the ship seaworthy and so forth.

22. **Mr. Oyarzábal** (Observer for Argentina) said that the obligation imposed on the carrier to exercise due diligence indeed appeared to be an obligation of means. His delegation thought that the obligation should be one of result: the carrier should be required to ensure that the ship was seaworthy and should be held liable for the consequences if it was not maintained in a seaworthy condition.

23. **Mr. Tsantzalos** (Greece) said that his delegation could support the Netherlands' proposals but was not in favour of changing the definition of "container".

24. **Mr. Mayer** (Switzerland) said that his delegation supported the Netherland's first proposal, which would prevent claimants from asserting that containers were part of the ship. Otherwise, the current wording of the draft article should be retained, in particular the words "during the voyage". The requirement that due diligence must be observed throughout the voyage constituted an important improvement in maritime law.

25. **Mr. Sato** (Japan) said that the first Netherlands proposal was not a change of substance but a necessary clarification to ensure that containers were not considered an intrinsic part of the ship; his delegation could support it. It could also support the substance of the second proposal, but would prefer to implement it, not by changing the definition of "container", but by adding a reference to road and railroad cargo vehicles to subparagraph (c). It was true that for a carrier to supply a road or railroad cargo vehicle was a rare occurrence, but if it did so, it should be obliged to keep it in an appropriate condition.

26. **Mr. Elsayed** (Egypt) said that his delegation agreed with the representative of the Netherlands that the wording needed to be consistent with the prevailing situation. He proposed that the words "in which the goods are carried" should be deleted the first time they appeared in subparagraph (c).

27. **The Chairperson** said he took it that the Commission approved of the proposal to change the first part of draft article 15, subparagraph (c), so that it would read: "Make and keep the holds, all other parts of the ship in which the goods are carried and any containers supplied by the carrier in or upon which the goods are carried ...". However, there did not seem to be a consensus in favour of other amendments.

28. *Draft article 15, as amended, was approved in substance.*

Draft article 16 (Goods that may become a danger)

29. **Mr. Elsayed** (Egypt) proposed that a proviso should be added at the end of draft article 16 to the effect that, in order to evade liability for the measure contemplated by the article, the carrier must declare that it was unaware that the goods were dangerous or might become a danger; and, if the carrier took measures damaging to the goods, it must justify those measures and explain why it could not take less drastic measures.

30. **Ms. Czerwenka** (Germany) said the concern seemed to be that draft article 16 allowed the carrier broad discretion to destroy goods since draft article 18, paragraph 3 (o) released the carrier from liability for acts "in pursuance of the powers conferred by articles 16 and 17". But if the carrier accepted goods, having been informed by the shipper pursuant to draft article 33 that they were dangerous in nature, and did not take appropriate measures, it would seem that the carrier should be liable for later destroying the goods on the grounds that they were or appeared likely to become a danger. Her delegation could therefore support the proposal for a proviso that the carrier in order to escape liability must not have been aware of the dangerous nature of the goods. Justification of the reasonableness of the actions taken, however, could be left to the litigation stage.

31. **Mr. Mayer** (Switzerland) said that the overall system was coherent and right. Draft article 16 was part of chapter 4 on obligations of the carrier, which were essentially to keep the ship seaworthy and to take proper care of the cargo. The draft article simply made the point that the mere act of destroying cargo was not necessarily a breach of the carrier's obligations. Chapter 5, on the other hand, dealt with the liability of the carrier for loss, damage or delay and addressed the concerns just raised.

32. Draft article 16 did not apply to goods of a dangerous nature as such, which were of necessity often carried in trade, but to goods that actually became or were likely to become a danger in the course

of carriage. In such cases the carrier had an obligation to take action to protect the ship, the crew and the other cargo, even if that entailed sacrificing the goods. Notwithstanding the exemption from liability allowed under draft article 18, paragraph 3 (o), the carrier was not exempt from the test of reasonableness, stipulated in draft articles 16 and 17, or the other tests set out in draft article 18, paragraphs 4 and 5. Moreover, if the shipper had duly informed the carrier pursuant to draft article 33 that the goods to be shipped were dangerous in nature, the carrier could not bring a liability action against the shipper. Thus, there were many checks on the carrier's discretion to damage or destroy cargo, and there was no need to change the text of draft articles 16 and 17.

33. **Mr. Sato** (Japan) said that his delegation agreed that the system, taken as a whole, was adequate and did not need to be changed. In a situation where the carrier had accepted dangerous goods after being informed of their nature by the shipper, the carrier would certainly have an obligation to take appropriate safety measures, and if the carrier contributed to the circumstance necessitating the damage or destruction of the goods it would be liable under draft article 18, paragraph 4 (a), notwithstanding the exemption from liability under paragraph 3 (o) and the powers conferred by draft articles 16 and 17.

34. **Mr. Berlingieri** (Italy) said that two situations could be envisaged. If potentially dangerous goods were loaded onto a ship with the carrier's knowledge and were subsequently sacrificed at sea, and if the carrier was unable to show that the danger had increased during the voyage, the carrier would be liable under draft article 18. If, however, the situation changed so that the theoretical danger posed by such goods became real — for example, if they exploded or caught fire — and were sacrificed in order to prevent further harm, to hold the carrier liable would be tantamount to transferring liability from the shipper to the carrier, which was unacceptable. Draft article 16 should be left unchanged.

35. **Mr. Elsayed** (Egypt) said that draft article 16 envisaged a situation in which the carrier did not realize that the goods posed a potential danger; the situation envisaged in draft article 18 was quite different. The Commission would need to decide how that difference should be reflected in the draft articles.

36. **The Chairperson** noted that there did not appear to be sufficient support for the proposed amendments.

37. *Draft article 16 was approved in substance and referred to the drafting group.*

Draft article 17 (Sacrifice of the goods during the voyage by sea)

38. **Ms. Downing** (Australia), drawing attention to paragraphs 28 to 30 of her delegation's comments on the draft convention (A/C.9/658), said that the scope of draft article 17 was broader than the treatment of the issue under the Hague-Visby Rules or the Hamburg Rules and would afford a lesser degree of protection to shippers than current international law.

39. *Draft article 17 was approved in substance and referred to the drafting group.*

The meeting was suspended at 4.30 p.m. and resumed at 5 p.m.

Draft article 18 (Basis of liability)

40. **Mr.** Ibrahima Khalil **Diallo** (Senegal), drawing attention to paragraphs 8 to 12 of the comments on the draft convention submitted by Angola, Benin, Burkina Faso, Cameroon, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Ghana, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Nigeria, Senegal and Togo (A/C.9/658/Add.1), said that the position of those States had not changed during the lengthy discussions that had culminated in the current wording of draft article 18. Most of the States in his subregion were governed by the Hamburg Rules, which were worded differently from the draft article. The shipping industry had made tremendous technological strides over time and the exceptions listed in paragraph 3 were no longer valid; the industry, and especially small-scale shippers, would suffer from their inclusion. Paragraph 2 of the draft article was quite sufficient to protect the carrier and paragraph 3 should be deleted.

41. **Mr. Elsayed** (Egypt) said that his delegation would prefer to begin paragraph 3 with wording along the lines of "Unless the claimant proves that the carrier is at fault..."; however, the best solution would be to delete the entire paragraph, as the representative of Senegal had proposed.

42. **Ms. Downing** (Australia), drawing attention to paragraphs 31 to 37 of her delegation's comments on

the draft convention (A/C.9/658), said she realized that the Working Group had spent a great deal of time on the draft article and that the issue of liability was a complex one. However, like the representative of Senegal, her delegation had concerns about the list of exceptions contained in paragraph 3. The wording differed from that of the similar lists included in the Hague Rules and the Hague-Visby Rules and would need to be interpreted by the courts. In addition, the burden of proof would be more onerous for the claimant, particularly if the unseaworthiness of the ship was alleged. Proportional liability was frequently invoked as a stalling device; as noted in paragraph 37 of her delegation's comments, in a case where two or more causes, one of which was unseaworthiness, contributed to the loss or damage, the existing text provided no guidance as to who bore the onus of proof.

43. **Ms. Chatman** (Canada) said that her delegation's position, like those of the representatives of Australia and Senegal, remained unchanged. Canada's shipping industry had been consulted extensively and was of the view that draft article 18 would make the burden of proof excessively onerous for shippers. Paragraph 5, in particular, should be amended in order to place the burden of proof with respect to seaworthiness on the carrier, not the shipper.

44. **Mr. Imorou** (Benin), **Mr. Ndzibe** (Gabon), **Ms. Sobrinho** (Observer for Angola), **Mr. Bigot** (Observer for Côte d'Ivoire) and **Mr. Ousseimi** (Observer for the Niger) associated themselves with the statement made by the representative of Senegal.

45. **Mr. Tsantzalos** (Greece) said that, although he wished to reiterate his delegation's concern at the elimination of "nautical fault" from the list of exceptions, his delegation supported the draft article as it stood.

46. **Ms. Slettemoen** (Norway) said her delegation considered that draft article 18 was, in many ways, the core of the draft convention. The current wording was the result of years of difficult negotiations, and, although not perfect, should be left unchanged.

47. **Mr. Blake-Lawson** (United Kingdom), **Mr. Mayer** (Observer for Switzerland) and **Mr. Hron** (Czech Republic) said that draft article 18 should remain in its current form in its entirety, without deletion of paragraph 3.

48. **Ms. Czerwenka** (Germany) said she understood the concerns expressed by the delegations that wished to amend the draft article. As the representative of Senegal had noted, the list contained in paragraph 3 was not an example of modern law. Her delegation would prefer a clearer, shorter text but was prepared to support the majority view, whatever it might prove to be.

49. It seemed to her that the concern expressed by Australia in paragraph 37 of its written comments (A/CN.9/658) was addressed in the current text of draft article 18. Paragraph 5 of the draft article made it clear that in cases such as those mentioned in paragraph 37 of Australia's comments the burden of proving due diligence lay with the carrier, although the alternative wording proposed by Australia was more elegant. Her delegation was prepared to accept that proposal, but it could also accept the paragraph as it stood.

50. **Mr. Sato** (Japan) suggested that, for the sake of consistency, "including" should be deleted from paragraph 5 (a) (iii) and the passage should be reworded in order to reflect the amendment to draft article 15 (c) that had already been approved. His delegation would then be prepared to approve draft article 18.

51. **Mr. Cheong** Hae-yong (Republic of Korea) said that, even though his country's shipping industry was strongly in favour of restoring "nautical fault" to the list of exceptions in paragraph 3, his delegation joined those of Greece and Switzerland in calling for the draft article to be approved in its current form.

52. **Mr. Elsayed** (Egypt) said that under both written and common law, the carrier's liability was based not on the exercise of due diligence but on results. The amendment that his delegation had proposed would preserve the rights of the shipper where the carrier was at fault; if it was not accepted, the draft article should be deleted in order not to alter the balance between the contracting parties or to weaken a principle that all delegations wished to preserve.

53. **Mr. Egbadon** (Nigeria) said that he associated himself with the other African delegations. Paragraph 3, if approved in its current form, would negate all the progress achieved in the previous articles of the draft convention and particularly in chapter 4, which established the terms of the carrier's obligations. He urged delegations to consider the amendment proposed in paragraph 12 of document A/CN.9/658/Add.1.

54. **Mr. Schelin** (Observer for Sweden) said that, like the representative of Germany, he would have preferred a shorter version of paragraph 3; however, he was aware of the lengthy debate and the sensitive compromises that had culminated in the text that the Commission had before it. The representative of Japan's suggestion had merit, and his own delegation would like to propose that the brackets in paragraph 5 (a) (iii) should be removed and that "including" should be replaced by "and".

55. **Mr. Berlingieri** (Italy), endorsing the text as it stood said, by way of explanation to those delegations proposing amendments, that chapter 4 on obligations and chapter 5 on liability represented an overall compromise and should be read together. In chapter 4, in contrast to the Hague-Visby Rules, the carrier's obligations had been made continuous throughout the voyage; and in the draft convention's liability regime, two basic Hague-Visby exonerations — fault in navigation and fault in management of the ship — had been eliminated, significantly shifting the balance in favour of the shipper.

56. Regarding article 18, paragraph 3, whose deletion had been proposed, there was a misunderstanding: the list of exceptions in paragraph 3 were not exonerations but rather cases of reversal of the burden of proof. Perhaps that was a traditional approach, but it was one based on common sense and was certainly not obsolete. The purpose of the list was to reverse the burden of proof in situations where it was likely that the cause of the loss or damage was an event beyond the control of the carrier. A certain balance had been struck because the draft article allowed the shipper to prove that a different cause was at issue or that fault by the carrier had contributed to the loss or damage. The text was certainly not contrary to domestic transport law, which was generally based on fault and not on strict liability.

57. **Ms. Lost-Sieminska** (Poland), **Ms. Talbot** (Observer for New Zealand) and **Mr. Sandoval** (Chile) endorsed the current text and supported the technical correction to paragraph 5 (a) proposed by Japan and Sweden.

58. **Mr. van der Ziel** (Observer for the Netherlands) said that the compromise wording of article 18 drastically shifted the balance of interest in favour of cargo interests, and there was no need to go further than the draft already did. He therefore supported the text as it stood, with Japan's correction in the interest of consistency.

59. **Mr. Baghali Hamaneh** (Islamic Republic of Iran), expressing strong reservations to article 18, said that it should be amended to balance the interests of the carrier and the shipper. Paragraph 3 should be deleted because it provided too many grounds for exonerating the carrier. He would also prefer the deletion of paragraph 5; the carrier should be liable if the claimant proved fault. Paragraph 4, moreover, should be amended to put the shipper on a fairer footing and shield the shipper from the heavy burden of proving unseaworthiness claims whenever the carrier invoked one of the defences under paragraph 3.

60. **Ms. Carlson** (United States of America), supporting the remarks of Italy and the Netherlands, favoured retention of the current text, with the technical correction proposed by Japan. Years of negotiations by the Working Group had gone into producing the text, which was an essential part of a package of compromises; and it would be a deplorable mistake to introduce any amendments that might result in the failure of the draft convention.

61. **Mr. Alba Fernández** (Spain), endorsing the remarks of Italy, the Netherlands and the United States, said that the current wording of article 18 should be maintained. It preserved the traditional rules of carrier and shipper liability and the traditional treatment of the burden of proof in other maritime, air and road transport treaties. Under no circumstances would Spain agree to the removal of the need to prove the simple probability of the unseaworthiness of the ship.

62. **Mr. Imorou** (Benin), agreeing with the Italian delegation that the rules should be based on common sense, disagreed that the exceptions listed in article 18, paragraph 3, were not exonerations: they were simply disguised exonerations. The African countries were mainly shipping countries, and their shippers should certainly be able to impute latent defects to the carrier.

63. **Ms. Malanga** (Observer for the Congo) said that, like other African countries, she believed that article 18 was not the balanced text it purported to be. She would in particular support the deletion of paragraph 3, which provided so many grounds for relieving the carrier of liability.

64. **Mr. Hu** Zhengliang (China), noting the importance of article 18, said that the text was the

result of long discussions in the Working Group and should be retained, with Japan's technical correction. Even though China's shipping industry was not happy with the entire list in paragraph 3, his delegation favoured its retention because the exceptions enumerated would actually resolve uncertainties in practice.

65. **Ms. Eriksson** (Observer for Finland) said that although her delegation was not completely happy with the final draft of what was a very complex article and would have preferred a more streamlined text, it could accept it as it stood. However, she believed that it would be important to highlight in the Commission's report the explanation given earlier by Italy, that paragraph 3 did not list a series of exonerations but rather shifted the burden of proof.

66. **Mr. Mollman** (Observer for Denmark), observing that there should be a firm consensus before making any changes in a text arrived at after sensitive compromises in the Working Group, said that his delegation therefore endorsed as it stood. The consequential correction put forward by Japan could not be considered a change in that sense.

67. **Mr. Serrano Martínez** (Colombia) said that the basic assumption of article 18 was that the carrier had an obligation to deliver the goods in the same condition in which they had been received, an obligation both of result and of guarantee. On the most controversial point, it was therefore important to enumerate the exemptions that relieved the carrier of liability, especially since it was difficult to distinguish under the Hague-Visby Rules whether the carrier's liability was objective or subjective and whether there was to be presumption or proof of fault. His delegation was therefore in favour of retaining draft article 18 in its entirety in its current wording.

68. **Mr. Ngoy Kasongo** (Observer for the Democratic Republic of the Congo) said that the text of article 18 could be improved and that it was the Commission's task to carry forward the work done over the years in the Working Group. All the key articles of the draft convention had been the subject of sharp debate but a proper balance of interests had not yet been struck. If the current text was retained, the fundamental notion of the liability of the carrier became relative. He fully agreed that the concept of the burden of proof should be based on common sense. The list of exemptions in paragraph 3 were a boon for insurers but detrimental to the economies of the African States, and should be deleted.

69. **Mr. Sharma** (India) observed that the issue of liability had been very central to the Working Group's deliberations from the start. While noting that the list of exonerations in the Hague-Visby Rules had been eliminated from the subsequent Hamburg Rules, the Working Group had determined that the list had worked well in its time and indeed had been adopted in most national legislations. It had with difficulty arrived at a compromise text, which India believed should be retained, except for the technical correction to paragraph 5 (a).

The meeting rose at 6.05 p.m.